



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

ALGERIA

IAA reference: IAA17/03059

Date and time of decision: 3 November 2017 15:27:00

Belinda Mericourt, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of an referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Algerian national of the Sunni religion. [In] July 2016 he lodged an application for a Safe Haven Enterprise Visa (SHEV). In a decision dated [in] July 2017 the delegate of the Minister of Immigration and Border Protection (the delegate) refused to grant the visa. The applicant's claims are primarily that he will be seriously harmed as a result of having a sexual relationship with an underage girl whose family members are powerful (her brother is a [senior public employee]) and have subsequently threatened to kill him.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. The IAA received a submission from the applicant's representative on 29 August 2017. To the extent that this engaged in argument with the delegate's decision based on information which was before the delegate, I have had regard to it.
4. The submission also refers to a media article relating to 'honour' killings published on 5 June 2013 but unreferenced and a [details of particular tribe removed]. This new information is country information rather than personal information. No reasons have been provided as to why this new information either could not have been provided before the date of the delegate's decision or why it should be considered credible personal information. The applicant has not satisfied me that s.473DD(b) is met with regard to any of the new information provided. Further, the applicant and his representative had already been provided with ample opportunity to provide information on all the matters in question, and had been made aware by the delegate that he would have regard to any information which was provided to him before a decision was made. I am therefore not satisfied that there are exceptional circumstances to justify considering this new information.
5. The applicant also provided information about various medical conditions which have been diagnosed since his arrival in Australia and the medications which have been prescribed for him. One of the medications for pain relief may have side effects of anxiety, confusion, nervousness and cognitive dysfunction. The applicant's representative has submitted that this medication may have affected his memory at the time of his SHEV interview which would explain why he could not remember certain details when asked by the delegate. I have had regard to this submission.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - The applicant said that he was a practicing Sunni Muslim in Algeria and continued to be a practicing Muslim in Australia.
 - The applicant and his brother started a business specialising in selling [goods]. In mid-2011, the applicant met a girl, [Ms A], who came to his store to shop for [goods]. He was attracted to her and obtained her [contact details]. They commenced

communicating with each other. She lived [a distance] away. She would occasionally come to his town to visit her [relative] who lived close to his shop. When she next came to his shop he told her that he liked her and she reciprocated his feelings.

- [Ms A] told the applicant they had to be careful because she belongs to a powerful tribe, [Tribe 1] and her brother was a [senior public employee] in the state of Mostaganem. She told him that they would reject his offer of marriage because her family was very affluent and a much higher status than his family.
- The applicant and [Ms A] started going to [different locations] every time she came to the applicant's town but only briefly as they were worried her family would question her about her whereabouts.
- The applicant started travelling to Mostaganem to see her about once every one or two weeks. He would rent a hotel room, paying a bribe of double the cost of a [room] so that [Ms A] would be allowed into the hotel with him. They commenced a sexual relationship. They continued their emotional and sexual relationship. At his SHEV interview the applicant stated that they only had sexual relations on one occasion in February/March 2012 and he did not meet with her after that because she was scared her family would find out. They only spoke on the phone from that time until his departure from Algeria.
- In early September 2012 the applicant received a call from [Ms A's] brother, [Mr B] who screamed at him and threatened him for tarnishing the family reputation and said his tribe would track him down and kill him. At his SHEV interview the applicant stated that he received a phonecall from [Ms A] in early September telling him that her family had found out she was not a virgin and had hit her. She said that her brother "won't leave him" and this prompted his decision to depart Algeria.
- The applicant fled Algeria to [Country 1] where he stayed for [a number of] days. He tried to phone [Ms A] without success. He was worried that [Mr B] would have the resources to track him down. A friend told him he could get a visa to [Country 2] so he returned to Algeria to obtain the visa and a ticket to [Country 2]. He departed Algeria on the same day as he was worried [Mr B] would be aware he had re-entered Algeria.
- When the applicant was in [Country 2] he contacted his family who told him [Mr B] had come to his shop and the family home and threatened he would kill the applicant. He assaulted the applicant's brother, [Mr C]. [Mr C] told the applicant that [Tribe 1] is looking for him and [Mr B] himself had made a formal complaint to the police accusing him of having a relationship with a minor (as she was [age] years old). The police then came to the family home enquiring about him and his family told them he was in [Country 2].
- Nothing has happened to his family or his brother, [Mr C], since [Mr B] and the police visited his family home a few weeks after he left Algeria.
- The applicant fears that if he returns to Algeria he will be killed by [Ms A's] family members, particularly her brother or members of her tribe.

Factual findings

7. The applicant's claims as to his identity and nationality have been consistent since his arrival in Australia. He conducted interviews in Arabic and has submitted copies and translations of his birth certificate, passport, and national identification card. I accept the applicant's nationality and identity are as claimed and find Algeria to be the receiving country for the purpose of the

application. There is no evidence before me to suggest that the applicant has a right to enter and reside in any country other than Algeria and I am satisfied he does not: s.36(3).

8. I am satisfied the applicant departed Algeria legally as the holder of a valid and genuine passport and that he followed the instructions of the people smuggler to dispose of it.

Refugee assessment

9. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

10. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
11. The applicant has stated that the only reason he fears returning to Algeria is due to the threats to his life and person made by [Mr B], [Ms A’s] family members and/or the police and/or members of [Tribe 1] as a result of his sexual relationship with [Ms A’s].
12. Islamic religious discourse explicitly condemns sex before marriage. Religion, customs and the penal code in Algeria all condemn sex before marriage. Article 333 of the penal code provides a custodial sentence of two months to two years and a fine of between 500 and 2,000 dinars for any “outrage to public decency”. It is regularly applied to young unmarried Algerians caught kissing or petting.
13. The applicant has stated that his girlfriend, [Ms A], was [age] years old, almost [age] years old when they commenced their relationship in 2011 as her birthday was in [year]. She was still at [school]. She is a member of an affluent family and belongs to a powerful tribe. She has a conservative family who would be very shocked if she discovered she was not a virgin and who would be likely to harm her or kill her if they discovered this was the case. The applicant said although they discussed marriage very early in their relationship she told him that her family

would reject any offers of marriage from him because his family was of a lower status and different tribe. The applicant is a practising Muslim and so is his girlfriend.

14. I find the following evidence provided by the applicant somewhat implausible;

- [Ms A] was willing to risk being seen with the applicant in public on their own in his home town very soon after first meeting him, particularly as she was accompanied by her [sister] to the shop when she came to visit him and yet it appears [the] sister did not chaperone her during their time together alone. Her [relative] lived close to the shop and potentially there would be family members who would be able to recognise her in the area;
- in her own home town where she may be recognised, [Ms A] was willing to pretend to go to school and then meet with the applicant at a [place] and go to a hotel room with him on more than one occasion, and that the school did not report her absence to her family;
- [Ms A] was willing to lose her virginity to someone that she believed she could never marry and risk her family's wrath and possible very serious harm, including being killed by them if they believed their honour had been tainted;
- that her family somehow found out about the sexual relationship six or seven months after she had ceased meeting the applicant, although she never claimed to have told them and the only contact she and the applicant had been having for the previous six months was by telephone.

15. I have listened carefully to the applicant's SHEV interview with the delegate. I accept that the applicant's medications may have led to him having poor memory when asked questions about what school his girlfriend attended and place no weight on his failure to remember such details. However, I do not accept that the inconsistencies between his written statement of claims made [in] July 2016 and his oral evidence at the interview [in] June 2017 are simply a result of poor memory or anxiety.

16. The applicant's evidence was inconsistent about the following issues:

- In his written statement of claims the applicant said that he used to go to [Ms A's] home town every one or two weeks where he would rent a room in a hotel. He arranged to pay the [hotel] double what the rooms usually cost in order to have [Ms A] to enter the hotel with him. Although [Ms A] was very nervous because she was a virgin and she feared her family might kill her if they found out she had a sexual relationship with a man before marriage, they continued their emotional and sexual relationship. At the interview with the delegate the applicant said he could not recall how often he went to see her in her home town. He later stated that he and [Ms A] only had sexual relations on one occasion in February or March 2012 about six months after they had first started seeing each other. When asked by the delegate why he stopped going to see her in February/March 2012 he said that sometimes he just couldn't leave to visit her for 2 to 3 months because of his brother. When the delegate put to him that he had previously stated in his written application that he saw her every one or two weeks in her home town he said there were sometimes gaps. He then said they were so frightened after the first time they had a sexual relationship that that they did not see each other again and only had phone contact until the time he departed Algeria in September 2012, that is, for another six or seven months. The delegate confirmed that he was saying that he only slept with [Ms A] once and that was in February/March 2012.

- In his written statement of claims he made no mention of being warned by [Ms A] that her family had found out about their sexual relationship but instead stated that at the beginning of September 2012 he received a call from an unknown number. The caller asked him his identity and when he said who he was, the caller said he was [Ms A's] brother, [Mr B]. He started screaming and threatening the applicant for what he described as "tarnishing their reputation". [Mr B] said that he and his tribe would track the applicant down and kill him. The applicant decided to flee his home and left Algeria for [Country 1] where he lived for [a number of] days. He tried to ring [Ms A] unsuccessfully. He returned to Algeria for only one day in order to obtain a ticket and visa for [Country 2]. At his interview the applicant stated that the last time he had telephone contact with [Ms A] in September 2012 she phoned him to tell him that her family had found out about their sexual relationship and her brother had hit her. She was crying and frightened and said that her brother was looking for him and would never leave him (alone). She did not say how her family found out about the relationship. The applicant told her that he would flee. He left Algeria about two weeks after this conversation. The delegate asked the applicant if he had ever met or spoken to any members of her family and he said no. When the delegate put to him that in his written statement he said that he had received a phone call from [Ms A's] brother, [Mr B] in September 2012 he agreed that was the case. When the delegate put to him that he had never previously mentioned the phone call from [Ms A] warning him that her family knew about their relationship and her brother would look for him, the applicant said he was never asked. When asked about the phone call from [Mr B] the applicant said [Mr B] asked whether it was the applicant he was speaking to. When the applicant said yes [Mr B] said I want to hit you. The applicant didn't say anything because he was scared and hung up. He did not speak to [Ms A] after this call and was only worried about how to leave Algeria. He left Algeria about 3 to 5 days after he received the call. Nothing happened to him in that period of time. He did not tell his family about the incident and just said he was going on a holiday.
- In his written application, the applicant stated that while he was in [Country 2] he contacted his family who told him that [Mr B] had come to their shop and their house threatening that he would kill him. He also assaulted his brother, [Mr C]. [Mr C] told him that [Tribe 1] is looking for him and that [Mr B] himself had initiated a formal complaint to the police accusing him of having a relationship with a minor. [Mr C] also told him that the police came to his family home questioning them about his whereabouts and his family told them that he was in [Country 2]. At his interview, when asked by the delegate how he knew [Ms A's] tribe were looking for him he said he assumed they were doing so because that is the way it is in Algeria. When asked has anyone else other than [Mr B] come to look for him he said no. When the delegate put to him that he said in his written statement that [Mr B] had made a formal complaint to the police, the applicant said he assumed that because [Mr B is a public employee] he would do that. In response to further questions from the delegate he then said that [Mr C] told him [Mr B] said he was going to file a complaint but he was not sure if he did. The delegate asked why he said in his statement that the police were looking for him and the applicant said at the time [Mr C] spoke to him he was not sure but later the police came to the house. The applicant found this out once he was in [Country 2]. The delegate again put the inconsistencies in his evidence about [Mr B] making a formal complaint and the police coming to his home and the applicant denied stating earlier in the interview that no one had come to his home, insisting that he had said that the police had come to his home looking for him. He said the police threatened to arrest him if he was found but said that no formal arrest warrant had been issued.

17. At his SHEV interview the delegate put to him that it seems strange that, given [Mr B] knew him and where his family shop was, that he did not seek to harm the applicant before he left Algeria but waited for [weeks] before he followed up what would have been a serious dishonour to his family. The applicant did not have any explanation for the delay.
18. Real chance is a substantial chance as distinct from a remote or far-fetched possibility.¹
19. Having regard to the totality of the applicant's evidence, including the inconsistencies between his written statement of claims and the evidence he provided at the interview with the delegate combined with the concerns I have about the plausibility of some of the applicant's evidence as discussed above, I am not satisfied that the applicant has had a sexual relationship with a minor in Algeria. I am not satisfied that the applicant has had a sexual relationship or a boyfriend/girlfriend relationship with a girl from an affluent family and a powerful tribe and whose brother is a [senior public employee]. Even if I accept that the applicant had a platonic relationship with a girl who occasionally visited [his] shop, I am not satisfied that the girl's family members 'discovered' or thought there was a sexual relationship six months after the applicant and the girl ceased seeing each other face-to-face. I am not satisfied that the applicant's life was threatened by anyone as a result of his having a sexual or platonic relationship with a girl. I am not satisfied that a person called [Mr B], or the police came to the applicant's family home after he had departed Algeria looking for him because he had had a sexual relationship with [Mr B's] sister or for any other reason. I am not satisfied that the applicant has an adverse profile with [Tribe 1] or any other powerful tribe in Algeria or that he has an adverse profile with the police or any other authorities in Algeria.
20. In conclusion, I am not satisfied that there is a real chance that the applicant's life has been or will be threatened or that he will suffer serious harm, having regard to the extensive instances of serious harm in s.5J(5) of the Migration Act, if he returns to Algeria now or in the foreseeable future for reasons of having a sexual or platonic relationship with a girl outside of marriage or for reasons of having a sexual relationship with a minor or for any other reason.

Refugee: conclusion

21. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

22. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

23. Under s.36(2A), a person will suffer 'significant harm' if:
 - the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person

¹ *Chan v MIEA*, (1989) 169 CLR 379 at 389.

- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

24. Real chance and real risk involve the same standard.²

25. I have made findings above that I am not satisfied that the applicant has had a sexual relationship with a minor or a sexual or a platonic relationship with a girl outside of marriage. I am not satisfied that members of the girl's family have threatened his life or harm to his person. I am not satisfied that the police or any other person has been looking for the applicant for reasons of having had a sexual relationship with a minor or with a girl outside of marriage or for any other reason.

Complementary protection: conclusion

26. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

² *MIAC v SZQRB* (2013) 210 FCR 505

Applicable law

Migration Act 1958

5 (1) Interpretation

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.